

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

AUG 15 2011

GREGORY C. LANGHAM
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-01631-LTB

JOHN HENRY JAMES,

Plaintiff,

v.

ELEVENTH JUDICIAL DISTRICT ATTORNEY'S OFFICE, Fremont County, Colorado,
STATE DISTRICT COURT JUDGE JULIE G. MARSHALL,
EDNA M. CHESS, Judicial Assistant, Dist. Ct. Div. 2,
DEBORAH SATHER-STRINGARI, Clerk, Dist. Ct. Div. 2,
HELENE ENGLER, Clerk District Court Div. 2, (Sitting by Assignment), Fremont County
11th Jud. Dist. [sic], and
SENIOR DISTRICT COURT JUDGE DAVID R. LASS,

Defendants.

ORDER DENYING MOTION TO RECONSIDER

Plaintiff, John Henry James, filed *pro se* on August 9, 2011, a motion to reconsider titled "Motion Requesting Reconsideration on This Court's United States District Court for the District of Colorado Order and Judgment [sic] of July 28, 2011 - Civil Action No. 11-cv-01631-LTB" and a supporting affidavit. Mr. James asks the Court to reconsider the order of July 28, 2011, which dismissed the complaint and this action without prejudice pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994). Judgment was entered on the same day.

The Court must construe liberally Mr. James's filings because he is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). For the reasons stated below, the

motion to reconsider will be treated as a motion pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, and denied.

A litigant subject to an adverse judgment, and who seeks reconsideration by the district court of that adverse judgment, may “file either a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e) or a motion seeking relief from the judgment pursuant to Fed. R. Civ. P. 60(b).” ***Van Skiver v. United States***, 952 F.2d 1241, 1243 (10th Cir. 1991). A motion to alter or amend the judgment must be filed within twenty-eight days after the judgment is entered. **See** Fed. R. Civ. P. 59(e). The Court will consider Mr. James’ motion to reconsider pursuant to Rule 59(e) because it was filed within twenty-eight days after the judgment was entered in this action on July 28. **See *Van Skiver***, 952 F.2d at 1243 (stating that motion to reconsider filed within ten-day limit for filing a Rule 59(e) motion under prior version of that rule should be construed as a Rule 59(e) motion).

The three major grounds that justify reconsideration are: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice. **See *Servants of the Paraclete v. Does***, 204 F.3d 1005, 1012 (10th Cir. 2000).

The Court dismissed the complaint and the instant action without prejudice pursuant to ***Heck*** because Mr. James was attacking his 1994 conviction. The reasons for the dismissal are discussed in detail in the July 28 dismissal order. Upon consideration of the liberally construed motion to reconsider and the entire file, the Court finds that Mr. James fails to demonstrate some reason why the Court should

reconsider and vacate the order to dismiss this action. Mr. James fails to demonstrate the existence of an intervening change in controlling law or new evidence and he fails to convince the Court of any need to correct clear error or prevent manifest injustice. Therefore, the motion to reconsider pursuant to Fed. R. Civ. P. 59(e) will be denied.

Accordingly, it is

ORDERED that the motion to reconsider, titled "Motion Requesting Reconsideration on This Court's United States District Court for the District of Colorado Order and Judgement [sic] of July 28, 2011 - Civil Action No. 11-cv-01631-LTB," that Plaintiff, John Henry James, filed *pro se* on August 9, 2011, and which the Court has treated as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e), is denied.

DATED at Denver, Colorado, this 15th day of August, 2011.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK
Senior Judge, United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 11-cv-01631-BNB

John Henry James
Prisoner No. 49264
Centennial Correctional Facility
PO Box 600
Cañon City, CO 81215

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on August 15, 2011.

GREGORY C. LANGHAM, CLERK

By: _____



Deputy Clerk